IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5813 OF 2015

M/s. Landmark Processors … Petitioner
Vs.
M/s. Ebyss Fiber 2 Fashion Limited through its
Director Khemsingh K. Rawat … Respondent

Mr. Kunal Bhanage for Petitioner.
Mr. Atharva A. Dandekar i/b. Mr. A. L. Gore for Respondent.

CORAM : R. G. KETKAR, J.
Reserved on : **07TH JULY, 2015**
Pronounced on**:** **27TH JULY, 2015**

ORDER :

Heard Mr. Bhanage, learned Counsel for petitioner and Mr. Dandekar, learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, original defendant has challenged the judgment and order dated 17.11.2014 passed by the learned 4th Joint Civil Judge, Junior Division, Ulhasnagar below exhibit-5 in Regular Civil Suit No.306 of 2014. By that order, the learned trial Judge allowed the application filed by the respondent, hereinafter be referred to as the plaintiff, and issued mandatory injunction directing the applicant, hereinafter be referred to as the defendant to handover vacant and peaceful possession of plot No.31/A, M.I.D.C. Industrial Estate, Ludhiana Mills Compound, Ambernath (W), District - Thane (for short 'suit premises') along with all machineries to the plaintiff within 1 month from the date of the order. The learned trial Judge issued injunction restraining defendant from dispossessing or causing obstruction to the plaintiff in enjoyment or conducting business in the suit premises till final disposal of the Suit without following due process of law.

3. Aggrieved by that order, defendant preferred Miscellaneous Civil Appeal No.19 of 2014 under Order 43, Rule 1(r) of the Code of Civil Procedure, 1908 (for short 'C.P.C.') in the District Court. Appeal was allowed on 07.02.2015. By that order, the learned District Judge quashed and set aside the impugned order passed by the trial Court. The learned District Judge issued temporary injunction restraining defendant from letting out the suit property to any third party till the decision of the Suit and expedited the trial.

4. Mr. Bhanage submitted that plaintiff instituted Writ Petition No.4845 of 2015 in this Court challenging the judgment and order dated 07.02.2015 passed by the learned Ad-hoc District Judge - 11, Kalyan in Miscellaneous Civil Appeal No.19 of 2014. By order dated 26.06.2015, Petition was allowed and the order dated 07.02.2015 passed by the learned District Judge was quashed and set aside on the ground that as plaintiff has instituted Suit essentially under Section 6 of the Specific Relief Act, 1963 (for short 'Act'), in view of Section 6(3) thereof, Appeal is not maintainable. Defendant has, therefore, instituted the present Petition challenging the order dated 17.11.2014 passed by the trial Court.

5. In support of this Petition, Mr. Bhanage submitted that on 01.02.2013, defendant and plaintiff entered into document styled as 'Leave and Licence Agreement'. The tenure fixed thereunder was 3 years commencing from 01.02.2013 and ending on 31.01.2016. He submitted that perusal of this document clearly shows that it was a Conducting Agreement. He has taken me through the document and submitted that plaintiff is described as a 'conductor'. Defendant has agreed to allow plaintiff to use the process house in the suit premises for cloth processing purpose on Conducting Agreement basis. Clause 1

thereof recited that defendant is the owner of the process house known as Landmark Processors situate in the suit premises and is willing to give the said process house on conducting basis to the plaintiff. Clause 2 thereof recites that plaintiff will conduct the said process house with all plant and machineries as per the annexures enclosed for the period of 3 years beginning from 01.02.2013 and ending on 31.03.2016. Clause 3 thereof provides that in consideration, plaintiff agreed to pay Rs.16,50,000/- as interest free refundable deposit to the defendant. Clause 4 thereof provides that the plaintiff agrees to pay Rs.80,000/- per month towards conducting charge to the defendant, payable on or before first day of next month. Clause 14 thereof provides that the defendant will handover possession of the machines to the plaintiff in a working condition, fit to commence the dying process. Clause 15 explicitly made clear that the relationship between the parties shall be that of the owner and conductor and not that of landlord and tenant. Clause 24 thereof provides that defendant has given the plant and machinery on conducting basis only to the plaintiff and the possession and ownership of the said unit will always remain with the defendant. He submitted that though the document is styled as 'Leave and Licence Agreement', in the pith and substance, it is a Conducting Agreement. He submitted that the plaintiff was in possession of plant and machinery only on conducting basis. In other words, defendant is in possession of the suit premises *de facto and de jure*. Plaintiff was never in possession of the suit premises.

6. Mr. Bhanage submitted that plaintiff had handed over possession to the defendant on 21.08.2014. Plaintiff thereafter instituted the Suit on 16.10.2014 i.e. after about 55 days of alleged dispossession. He submitted that since the plaintiff was not in possession of the suit premises, the Suit instituted under Section 6 of the Act, itself, is wholly

misconceived. He submitted that assuming plaintiff is a licensee and even though he may have actual possession of the suit premises, he is not protected by law as he is not entitled to avail himself of the remedy provided by Section 6 of the Act. In support of this submission, he heavily relied upon decision of this Court in the case of *Maganlal Radia Vs. State of Maharashtra*, **Vol.LXXII Bombay Law Reporter 734**.

7. Mr. Bhanage also relied upon the decision of the Apex Court in the case of *Associated Hotels of India Limited Vs. R. N. Kapoor*, **AIR 1959 SC 1262**, and in particular paragraph 28 thereof to contend that document dated 01.02.2013 styled as 'Leave and Licence Agreement' gives the only right to use plant and machinery under certain terms while the possession and control remained with the defendant. The factual and legal possession, therefore, continues to be with the defendant. It did not create in plaintiff's favour any estate or interest in the property.

8. Mr. Bhanage further submitted that basically, the Suit instituted by the plaintiff is not maintainable. Plaintiff claims to be licensee and defendant is a licensor. Thus, the Suit is between the licensor and licensee and in view thereof, the Civil Court will have no jurisdiction to entertain and try the Suit. In support of this submission, he relied upon the decision of the Apex Court in the case of *Mansukhlal Dhanraj Jain Vs. Eknath Vithal Ogale*, **(1995) 2 SCC 665**.

9. Mr. Bhanage further submitted that from perusal of the document dated 01.02.2013, plaintiff was given the plant and machinery only on conducting basis and the possession and ownership of the said unit was and is always with the defendant as is evident from clause 24 thereof. In other words, plaintiff was not in possession of the suit premises. There

was no licence in favour of the plaintiff to use the premises. In support of this submission, he relied upon the decision of the Apex Court in the case of *Bharat Petroleum Corporation Vs. Chembur Services Station*, **2011 (3) SCC 710**. He, therefore, submitted that the impugned order deserves to be quashed and set aside thereby dismissing the application exhibit-5 filed by the plaintiff.

10. On the other hand, Mr. Dandekar supported the impugned order. He submitted that in pursuance of the Leave and Licence Agreement dated 01.02.2013, plaintiff was given possession of the suit premises. Plaintiff being the licensee is factually in possession of the suit premises though the legal possession is with the defendant. He submitted that so long as the licensee is not evicted in execution of the of the decree lawfully obtained, his possession under Section 6 of the Act as a licensee is protected. Section 6 can be availed of to recover possession until he is lawfully dispossessed in due course of law. In support of this proposition, he relied upon the decision of the Apex Court in the case of *R. V. Bhupal Prasad Vs. State of Andhra Pradesh and others*, **(1995) 5 SCC 698**. He further submitted that the decision of this Court in the case of **Maganlal Radia** *(supra)* was considered by the Apex Court in the case of *East India Hotels Limited Vs. Syndicate Bank*, **1992 Supp (2) SCC 29**. In paragraph 46, Hon'ble Mr. Justice K. Ramaswamy observed that the High Court in that case held that the licensee whose licence has been terminated, even though he may have actual possession of the property, is not protected by law to avail himself of the remedy of Section 6. It was observed that "in that case, he was evicted by a summary procedure, i.e., in due course of law. So the remedy under Section 6 was not available. That was not a Suit under Section 6 but a Writ Petition under Article 226." In paragraph 47, it was held that the respondent, after expiry of the licence or its termination, was in settled

possession and its dispossession was otherwise than in due course of law. Therefore, a decree of possession under Section 6 of the Act is not illegal.

11. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Suit is instituted on 16.10.2014. The plaintiff contended that Agreement of Leave and Licence is executed between the plaintiff and defendant on 01.02.2013 in respect of the suit property. As per the said agreement, the licence period commences from 01.02.2013 and ends on 31.01.2016. The defendant informed that presently various machines like Stenter, Jet Machine, Giger Machine and Deca Machine are installed in the suit property. As the manufacturing business of defendant was closed for many months, plaintiff will have to repair and renovate the existing machines by installing new spare parts. The plaintiff contended that he had paid a sum of Rs.16,50,000/- on 30.01.2013 by a cheque towards interest free security deposit. The plaintiff had also purchased and installed various spare parts as also new boiler in the place of old boiler. The plaintiff also installed new masrising machine, soft flow machine, folding machine, washing machine, moulding machine and incurred expenses of Rs.25,00,000/-.

12. The plaintiff also paid licence fee from February 2013 to July 2014 by way of cheque @ Rs.80,000/- per month. The plaintiff had incurred expenses to the tune of Rs.11,00,000/- towards salary of employees and Rs.4,00,000/- towards labour charges for repairs and maintenance. The plaintiff also contended that the agreement provided that prior to expiry of the agreement period, either party by giving a notice of 60 days in writing could terminate the agreement. The plaintiff

contended that defendant did not give any notice of termination and therefore, agreement is valid and subsisting. As per clause 7 of the agreement, the defendant has to refund interest free security deposit of Rs.16,50,000/- to the plaintiff and if the said agreement is terminated before the stipulated period of 3 years after adjusting the dues of the plaintiff and if the defendant fails to do so, the plaintiff is to continue to use the suit property without paying conducting charges and fees to the defendant till the deposit is refunded.

13. The plaintiff contended that defendant did not refund any security deposit to the plaintiff and also did not terminate the agreement by following due process of law. The plaintiff thereafter gave various reasons for not starting manufacturing activities. The plaintiff further contended that plaintiff was about to start business and manufacturing activities in the month of August 2014. On 21.08.2014 at about 5.30 p.m., defendant and her husband Satendra Pal Singh Ahuja came along with 10 to 15 unknown persons in the suit property. At the instance of the defendant, defendant's husband forcibly broke open the locks of the main gate. They also pushed out the employees of the plaintiff and forcibly took possession of the suit property. The plaintiff has lodged complaint to the Ambernath police station, District Thane. However, the police did not take any action. On 23.08.2014, the security guards pushed out the plaintiff's security guard. In paragraph 18, the plaintiff asserted that defendant has taken possession of the suit property forcibly and without following due process of law. The Suit is filed for restoration of the legal possession. It is further contended that the plaintiff has got legal rights and can seek relief under Section 6 of the Act for filing Suit for restoration of the possession of the suit property.

14. In my opinion, if the plaint is read in its entirety, the suit is

essentially under Section 6 of the Act. As noted earlier, in paragraph 12, the plaintiff contended that the defendant did not give any notice of termination to the plaintiff and therefore, agreement of leave and licence is valid and subsisting till date. It is in that context, the plaintiff has sought declaration that the leave and licence agreement dated 01.02.2013 is still in existence and valid. Perusal of the plaint, and in particular paragraph 18 as also prayer clause (b) thereof, shows that plaintiff claims to be in physical possession of the suit premises and without following due process of law, defendant dispossessed him on 23.08.2014. This aspect was dealt by me in Writ Petition No.4845 of 2015 decided on 26.06.2015.

15. Mr. Bhanage submitted that plaintiff is not entitled to avail remedy provided by Section 6 of the Act. He relied upon the decision of this Court in the case of **Maganlal Radia** (*supra*) and **Bharat Petroleum Corporation** *(supra).* He submitted that in the case of **Associated Hotels of India Limited** *(supra),* the Apex Court, after considering Section 52 of the Indian Easements Act, 1882, has held in paragraph 28 that if a document gives a right to use the property in a particular way or under certain terms, while the possession and control remains with the owner, it will be a licence. The legal possession continues with the owner. The licensee is permitted to make use of the premises for a particular purpose. In the case of **Bharat Petroleum Corporation** (*supra*), the appellant before the Apex Court had entered into a Dispensing Pump and Selling Licence Agreement on 01.04.1972 with the respondent, appointing it as a dealer for selling the petroleum products of the appellant from a retail petroleum outlet. In paragraph 35 of the report, it was observed that there was no licence in favour of the licensee (respondent) to use the premises or use the facilities independent of the licence to sell the goods of the appellant. He

submitted that even in the present case, as per clause 24 of the document dated 01.02.2013, plaintiff was in possession of plant and machinery only, that too, on conducting basis. Plaintiff was never in possession of the suit premises. Defendant is in possession of the suit premises *de facto* and *de jure*.

16. It is not possible to accept the submissions advanced by Mr. Bhanage. In the case of **East India Hotels Limited** (*supra*), the Apex Court considered Section 6 of the Act as also the decision of this Court in the case of **Maganlal Radia** *(supra).* In paragraphs 44 and 46, it was observed thus,

> 44. Law respects possession even if there is no title to support it. No-one is permitted to take law in one's own hands and to dispossess the person in actual settled possession without due course of law. No person can be allowed to become a judge in his own case. The object of Section 6 is to discourage people to act in self help, however, good their title may be. The licensee in possession for well over 15 years is in settled possession and is entitled to remain in possession and make use of the premises for the purpose for which it was demised until it is ejected in due course of law. The acquiescence of the landlord in this context would be to the initial unlawful entry into possession and continuation thereafter but not to the continuance in possession of the licencee after the expiry or termination of the licence. That was what this court appears to have meant in the previous decisions. Take for instance that when a licence was granted for a couple of years and after its expiry, by efflux of time, or on termination, if the possession of the licensee, though unlawful and unjust is not protected, the aggressor or mighty would trample upon the rights of the weak and meek and denial of relief under Section 6 would put a premium upon the aggression or treachery or tricks. No doubt long delay in disposal of cases due to docket explosion became a ruse to unscrupulous litigant to abuse the due course of law to protract litigation and remain in unjust or wrongful possession of the property. Landlord could be suitably compensated by award of damages. It cannot, by any stretch of imagination, be said that a person in settled possession, though unlawful, is not entitled to the protection under Section 6 of the Act. Maintenance of law and order, and enthusing confidence in the efficacy of rule of law are condition precedent for orderly society. Therefore, giving primacy, legitimacy or legality to the conduct or acts of the landlord to take possession of the property

in derogation of the due course of law would be deleterious to rule of law and a pat on high-handedness or self-help.

46. In Maganlal Radia's case the Bombay High Court held that a licensee whose licence has been terminated, even though he may have actual possession of the properly, is not protected by law to avail himself of the remedy of Section 6. In that case he was evicted by a summary procedure, i.e. in due course of law. So the remedy under Section 6 was not available. That was not a suit under Section 6 but a Writ Petition under Article 226. This ratio renders little assistance to the appellant. In Harshad kumar Sunderlal Dalai's case the facts were that access to the room to the licensee was only through the court yard of the landlord. On termination of the licence the landlord closed the door from inside and did not allow the petitioner to get into possession. When a suit under Section 9 was laid for possession, it was held that a trespasser thrown out from possession cannot claim possession against the true owner under Section 9 of the old Act. For the aforesaid reasons, the ratio is not good law.

17. In paragraph 47, Hon'ble Mr. Justice K. Ramaswamy observed as under:

"… Thus I hold that the respondent, after expiry of the licence or its termination, was in settled possession, and its dispossession was otherwise than in due course of law. Therefore, the decree for possession under Section 6 of the Act is not illegal. …"

18. In the case of **Mansukhlal Dhanraj Jain** (*supra*), the Apex Court has observed in paragraph 24 that it is trite to say that Section 6 of the Specific Relief Act given a summary remedy to the plaintiff to seek restoration of possession from the defendant within six months of illegal recovery of possession by the defendant, **without referring to the title of the plaintiff and defendant**. It is purely a possessory suit **wherein status of the party is irrelevant. In such type of suits the plaintiff is not required to prove his title or a superior right to possession as compared to the defendant and has only to show that he was in possession of the suit premises and he was illegally dispossessed within a period of six months prior to the date of the suit**. Once the plaintiff proves this case, he becomes entitled to succeed and can get

status quo ante and restoration of possession of the suit premises through the assistance of the Court.

(emphasis supplied)

19. In view thereof, the reliance placed by Mr. Bhanage on the decision of this Court in the case **Maganlal Radia** *(supra)* does not advance the case of the defendant.

20. In the case of **Associated Hotels of India Limited** (*supra*), respondent made an application under Section 7(1) of the Delhi and Ajmere-Merwara Rent Control Act, 1947 to the Rent Controller, New Delhi alleging that he was a tenant of the spaces in the cloak-rooms of the Imperial Hotel and asking the fixation of the standard rent. The appellant opposed the application on the ground that the said Act did not apply and no standard rent could be fixed. The Rent Controller allowed the application filed by the respondent. On appeal by the appellant, the District Judge of Delhi set aside the order of the Rent Controller and dismissed the application. Respondent then moved the High Court in revision. The High Court set aside the order of the District Judge and restored that of the Rent Controller. Hon'ble Mr. Justice S. K. Das held that the rooms in question were rooms in a hotel within the meaning of Section 2(b) of the said Act which defines the expression “premises” and the respondent was not entitled to ask for fixation of standard rent. Hon'ble Mr. Justice Sarkar also came to the conclusion that a room in an hotel within the definition is any room in a building in the whole of which the business of an hotel is run. The definition of 'premises' under Section 2(b) of the said Act would include the spaces in the cloak rooms of the Imperiol Hotel and therefore, excluded from the operation of the Act. The Rent Controller had not power to fix any standard rent in that behalf. Hon'ble Mr. Justice Subba Rao gave a dissenting judgment. In

paragraph 28, the distinction between a lease and a licence was considered. After setting out Section 52 of the Indian Easements Act, 1882, it was observed, "under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest n the property. There is, therefore, clear distinction between the two concepts."

21. In the present case, plaintiff asserted in paragraph 6 as under:

> "6. The plaintiff states that as per the clause No.3 of the said agreement, the plaintiff had paid a sum of RS.16,50,000/- on 30.01.2013 by way of cheque towards the interest free security deposit to the defendant and **thereafter in the month of January 2013, the defendant handed over physical possession of the suit property to the plaintiff along with the existing machineries**." (emphasis supplied)

22. The defendant filed written statement and in paragraph 11, he dealt with the contentions raised in paragraph 6. Paragraph 11 of the written statement reads as under:

> "11. That the content of para No.6 are partly correct to the extent of that the plaintiff paid Rs.16,50,000/- (Sixteen Lakhs Fifty Thousand) as security deposit interest free to the defendant in the month of January 2013 **and permitted him to conduct the business in the suit property to the plaintiff along with existing machineries**."
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> (emphasis supplied)

23. In paragraph 21 of the impugned order, the learned trial Judge observed that from the perusal of the Leave and Licence Agreement and admission in written statement, it is crystal clear that the plaintiff was in possession of the suit premises for conducting the business till

21.08.2014. After considering the plaint and the written statement as also leave and licence agreement, I do not find that the learned trial Judge has committed any error in this regard. The plaintiff was factually in possession of the suit premises prior to its dispossession and that it was dispossessed on 21.08.2014.

24. The decision of the Apex Court in the case of **East India Hotels Limited** *(supra)* was considered by the Apex Court in the case of **R. V. Bhupal Prasad** (*supra*) and it was observed that in that case, the licensor, after the fire had broken in the premises, requested to give possession for effecting repairers and the licensor was alleged to have promised to give back possession to the licensee. Since the possession was not redelivered, the licensee approached the High Court under Section 6 of the Act for possession. The High Court granted decree for possession until he was duly ejected. The Apex Court also reproduced paragraph 44 of that report and observed in paragraph 12 as under,

> "12. It was held that so long as the licensee has not been evicted in execution of the decree lawfully obtained, his possession under Section 6 of the Act as a licensee is protected. Section 6 can be availed of to recover possession until he is lawfully dispossessed in due course of law."

25. Mr. Bhanage also relied upon the decision of **Bharat Petroleum Corporation** (*supra*). In that case, on 01.04.1972, the appellant entered into a Dispensing Pump and Selling Licence Agreement with the respondent, appointing it as a dealer for selling the petroleum products of the appellant from the said retail petroleum outlet. During a surprise inspection on 9.3.2007 carried out by the Quality Control Cell of the appellant in the presence of the Manager of the respondent, it was noticed that one of the dispensing units (No.OIC 3633) was giving a short delivery of 20 ml. of HSD (that is, when tested for accuracy against a five litre calibrated measure, the display showed 5.02 litres).

When the Dispensing Unit was checked on flash mode 55555 twice, it gave short delivery of 210 ml. (that is as against 5 litres, the display showed 5.21 litres). Therefore, the Electronic Register Assembly (ERA) of the said dispensing unit was removed from the Unit and was sent for inspection to MIDCO - the manufacturer of the dispensing Unit. MIDCO gave a report on 27.3.2007 stating that there was a deviation in the counting ERA and the Microcontroller chip hardware in the ERA was not the original component supplied by them with the Dispensing Unit. The appellant, therefore, issued a show cause notice to the respondent on12.6.2007 alleging that the respondent had manipulated/altered the original chip with a view to making illegal gain by cheating the customers of the company, thereby causing breach of trust, and calling upon the respondent to show cause within 15 days, as to why action should not be taken including termination of the dealership. By reply dated 10.07.2007, respondent denied the allegations in the show cause notice.

26. Respondent thereafter instituted Suit in the Court of Small Causes, Bombay for a declaration that - it is the tenant of the appellant in respect of the structures and equipment and sub-tenant of the appellant in regard to the land comprised in the suit premises; the supply of petrol and petroleum products by the appellant at the suit premises was an essential supply under section 29 of the Maharashtra Rent Control Act, 1999; the show cause notice dated 12.6.2007 was illegal and did not constitute a just and sufficient cause for cutting off or withholding the essential supply of petrol and petroleum products; and for a permanent injunction - restraining the appellant from forcibly dispossessing respondent from suit premises or in any manner interfering with the possession of the respondent in regard to the suit premises; and restraining the appellant from withholding or cutting off

the supply of petrol and petroleum products from the suit premises. Respondent filed application for temporary injunction restraining the appellant from forcibly dispossessing the respondent from the premises or interfering with its possession of the suit premises and from withholding or cutting off of any supply of petrol and petroleum products.

27. The appellant resisted the Suit and application for temporary injunction inter alia contending that respondent was neither a tenant, nor a sub-tenant, nor a deemed tenant. By order dated 13.05.2008, Small Causes Court directed the appellant to maintain status quo as on that date, that is, the respondent "shall remain in possession of the suit premises" and the appellant shall "continue to supply petrol and petroleum products to the petrol pump in the suit premises", till the preliminary issue regarding jurisdiction to entertain the suit was framed and a decision was rendered thereon.

28. Aggrieved by that decision, appellant filed appeal before the Division Bench of the Small Causes Court. By order dated 26.08.2008, the appeal was partly allowed. It set aside the order of the trial court insofar as it directed the appellant to continue the supply of petrol and petroleum products in the suit premises to respondent. The direction that the appellant shall maintain status quo by permitting the respondent to continue with the possession of the suit premises was not disturbed. Respondent challenged that order by instituting Writ Petition No.6689 of 2008. On 29.01.2009, the learned Single Judge of this Court disposed of the Petition by clarifying the order of status-quo granted by the lower Court to mean that the said order of status-quo shall not preclude the appellant from taking recourse to recovery of possession of the suit property from the respondent by following due process of law including by resorting to action under the provisions of the Public Premises Act, if

permissible. That order was challenged before the Apex Court. Respondent thereafter instituted Suit in the City Civil Court, Mumbai for a declaration that - the supply of petrol and petroleum products in the suit premises to respondent by the appellant is an essential supply under the Essential Commodities Act, 1955; the notice dated 12.06.2007 is illegal; and the appellant is not entitled to terminate/set aside the dealership under the agreement dated 01.12.1995; as also for an injunction restraining the appellant from stopping the supply of petrol and petroleum products or acting upon the notice dated 12.06.2007.

29. On 19.3.2009, the appellant terminated the dealership agreement and informed the respondent that it shall have no right to use the retail outlet premises for any purpose whatsoever and the facilities (Motor Spirit and/or High Speed Diesel pumps, storage tanks, pipes and fittings and all other facilities erected and provided by the company at the retail outlets) or to sell any petroleum products lying in the retail outlets.

30. In my opinion, this decision does not advance the case of the defendant for more than one reason. In the first place, in the case of **Mansukhlal Dhanraj Jain** (*supra*), the Apex Court has observed in paragraph 24 that it is trite to say that Section 6 of the Specific Relief Act given a summary remedy to the plaintiff to seek restoration of possession from the defendant within six months of illegal recovery of possession by the defendant, **without referring to the title of the plaintiff and defendant**. It is purely a possessory suit **wherein status of the party is irrelevant. In such type of suits the plaintiff is not required to prove his title or a superior right to possession as compared to the defendant and has only to show that he was in possession of the suit premises and he was illegally dispossessed within a period of six months prior to the date of the suit**. Once the

plaintiff proves this case, he becomes entitled to succeed and can get status quo ante and restoration of possession of the suit premises through the assistance of the Court.

(emphasis supplied)

31. Secondly, in the case of **Bharat Petroleum Corporation Limited** (*supra*), in paragraphs 34, 35 and 38, Hon'ble Mr. Justice Raveendran observed thus,

> 34. Clause 15 of the DPSL Agreement specifically provides that on revocation or termination of the licence for any cause whatsoever, the licensee shall cease to have any right to enter or remain in the premises or use the facilities. As the licence is only to enter the appellant's outlet premises to use the facilities for sale of appellant's petroleum products, if the licence to use the appellant's facilities for sale of appellant's products comes to an end and supply of appellant's products for sale by the respondent is stopped, there is no question of the licensee entering the outlet premises at all or remaining in the outlet premises or using the outlet premises.
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> 35. To reiterate, the permission granted to the respondent by the appellant to enter the outlet premises is for the purposes of using the equipments/facilities belonging to the appellant installed in the outlet, to sell the products of the appellant. Under the licence (DPSL) agreement, the respondent cannot enter the premises for any purpose other than for using the facilities or equipment installed by the appellant or for any purpose other than selling the petroleum products of the appellant. Therefore the licence to enter the premises and the licence to use the facilities/equipment is incidental to the licence to sell the products of the appellant as a licensed dealer, distributor or agent. In this case the premises is a land held on leasehold by the appellant wherein it has constructed/erected certain structures and housed certain facilities/ equipment. The premises is known as appellant's `company owned retail outlet'. The goods/products sold belong to the appellant. If the appellant decides to stop the supply of its goods for sale in the said outlet, automatically the licence granted to the respondent to enter premises and use the facilities become redundant, invalid and infructuous. There is no licence in favour of the licensee to use the premises or use the facilities independent of the licence to sell the goods of the appellant.
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> 38. It is made clear that this decision applies only to licences

> where the licensor is the owner/ lessee of the premises and the equipment (in this case dispensing pumps and other equipment) and where the licensee is engaged merely for sale of the products of the licensor. In other words, this decision would apply to petrol stations which are known as CCROs (`Company Controlled Retail Outlets'). If the licensee is himself the owner/lessee of the premises where the petroleum products outlet is situated or where the exclusive right to use the premises is given to the licensee for carrying on any business or dealing with any goods unconnected with the licensor, this decision may not apply and it may be necessary for the licensor to have recourse either to a Civil Court for a mandatory injunction to give up the premises, or the Estate Officer under the Public Premises Act for `eviction' as the case may be, depending upon the nature of licence and the status and relationship of the parties.

32. Thirdly, in that case, proceedings were not under Section 6 of the Act. The licence of dealership was terminated on 19.03.2009. In the present case, prima facie, there is no material to indicate that defendant has terminated the licence. As against this, Hon'ble Mr. Justice Gokhale, while disagreeing with Hon'ble Mr. Justice Raveendran, observed in paragraph 86 that the learned Single Judge has permitted the appellant to proceed against the respondent under the Public Premises Act on the footing that after the termination of the dealership agreement, the occupation would be unauthorised. The learned Single Judge rightly observed that the pendency of the proceeding in the Civil Court can not preclude the appellant from taking recourse to recovery of the possession of the suit premises by following due process of law including by resorting to action under the provisions of Public Premises Act, if permissible. It was also clear that in any case possession can not be obtained by force.

33. Mr. Bhanage submitted that in any case, the Suit is between the licensor and licensee and in view thereof, Civil Court will have no jurisdiction to entertain and try the Suit. He relied upon the decision of **Mansukhlal Dhanraj Jain** *(supra)*. As against this, Mr. Dandekar

submitted that the Suit is under Section 6 of the Act. He further submitted that in paragraph 2 of the written statement, defendant contended that the Suit is instituted on the basis of the leave and licence agreement. There is a separate competent authority to conduct such type of cases under Rent Control Act and hence, Civil Court has no jurisdiction to try the Suit. He submitted that in the case of **Mansukhlal Dhanraj Jain** (*supra)*, the Apex Court observed in paragraph 24 as under:

> "24. Analogy drawn by Sawant, J. from cases under Section 6 of the Specific Relief Act, 1963 on the clear averments in the plaints in present cases is also not apposite. It is trite to say that Section 6 of the Specific Relief Act given a summary remedy to the plaintiff to seek restoration of possession from the defendant within six months of illegal recovery of possession by the defendant, without referring to the title of the plaintiff and defendant. It is purely a possessory suit wherein status of the party is irrelevant. In such type of suits the plaintiff is not required to prove his title or a superior right to possession as compared to the defendant and has only to show that he was in possession of the suit immovable property and he was illegally dispossessed within a period of six months prior to the date of the suit. Once the plaintiff proves this case, he becomes entitled to succeed and can get status quo ante and restoration of possession of the suit premises through the assistance of the Court. In given cases, even injunction suits purely based on previous peaceful possession and sub-sequent threatened dispossession may stand on an entirely different footing and might not attract the sweep of Section 41(1) of the Small Causes Courts or for that matter Section 28 of the Bombay Rent Act. But the present suits are not of that type. They are suits clearly based on the allegation that the plaintiffs are licensees on monetary considerations and they apprehend to be dispossessed, not in accordance with law, at the hands of defendant-licensors. Such suits as we have discussed earlier, dearly attract the applicability of Section 41 of the Small Causes Courts Act as both the conditions for its applicability, namely, that they are suits between licensees and licensors and they relate to recovery of possession of immovable properties situated in Greater Bombay are complied with. Consequently the conclusion is inevitable that the aforesaid suits as filed by the appellants were not cognizable by the City Civil Court, Bombay and they could be entertained only by the Small Causes Court, Bombay, and fall within the exclusive jurisdiction of the latter court."

34. I have already held that Suit is under Section 6 of the Act. In view thereof, I do not find any merit in the submission of Mr. Bhanage that plaintiff was not in factual possession of the suit premises. In the light of the above discussion, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

35. At this stage, Mr. Bhanage orally applies for stay of this order for a period of 8 weeks from today. He further expresses his inability to give undertaking in the usual form namely, in case the petitioner does not get suitable order from 8 weeks from today, petitioner will handover vacant and peaceful possession of the suit premises. In view thereof, oral application made by Mr. Bhanage is rejected.

(R. G. KETKAR, J.)

Minal Parab